

DATE: May 9, 2005

TO: Alan B. Reichard, Regional Director
Region 32

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Carpenters Local 971 UBJCA 560-2575-6767-2500
(Gore Acoustics) 560-7540-0100
Case 32-CC-1524-1 560-7540-8060-6717

BACKGROUND AND FACTS

1 In 2004, among other things, the Union met once with Gore to discuss a contract, spoke with Gore employees at various jobsites after which two resigned to work for Union contractors, and engaged in apparently lawful picketing of Gore for one day at a jobsite unrelated to the Charging Party. In early 2005, the Union informed Gore and several of its clients that Gore pays well below the area standard and that the Union would be engaging in a campaign to publicize this dispute.

contractor and developer, at an office building site in Reno, Nevada. The complex is located at the junction of Double R Boulevard and Longley Lane, a heavily traveled double-lane highway, in Reno. Gore worked at this site intermittently until March 9, 2005.

On March 4, 2005, the Union began displaying a large, stationary banner near the office complex worksite in Reno, at the northeast corner of Double R Boulevard and Longley Lane.² The Tanamera office building worksite is about 200 yards from the banner. The Tanamera office building worksite can be accessed on Double R Boulevard from the south and east without having to pass by the banner, which was held by two men and had the words in large print, "Shame on Tanamera Development." In smaller print, the words "Labor Dispute" are in the upper corners of the banner. The banner does not mention either the Union or Gore.

The persons holding the banner were not wearing any Union insignia.³ The banner holders remained stationary and did not yell or make any body movements. There is no evidence that the banner holders attempted to persuade any neutral employees to refuse to perform any services. The banner holders also distributed handbills urging recipients to pressure Tanamera into hiring only contractors that compensate their employees in accordance with the labor standards set by the Nevada Labor Commissioner. The handbills also stated that, "This flyer is not intended to create any delivery or work stoppage." The banners were present at this location for every work day until March 15.

On March 4, a second banner, with identical wording to the first banner, was established near Tanamera's corporate office located in another office complex, about two miles from the worksite. Tanamera's office is located to the rear of the complex and about 150 yards from the banner, which occurred about 50 feet from the Double R Boulevard entrance to the office complex. Access to that complex is through two entrances on Sandhill Drive and one entrance on Double R Boulevard. Cars can enter the office complex parking lot coming east from Sandhill Drive, as well as coming south from Double R Boulevard, without driving by the banner. The persons holding the banner did not wear Union insignia. They remained stationary and did not handbill or engage in any other conduct, as with the contemporaneous banner at the

² While the Region does not give the exact dimensions of the banner, from photographs they appear to be about 4' by 20' in size.

³ In a later meeting between the Union and Tanamera, the Union admitted responsibility for the banner.

Tanamera worksite. The bannering continued at this location on every work day until March 16.

At a meeting on March 16 between Tanamera and the Union, the Union indicated that it would remove the banners.

ACTION

We conclude that this charge should be dismissed, absent withdrawal. With regard to the 8(b)(4)(ii)(B) allegation, we conclude that the Union's banners lacked a sufficient degree of confrontation with potential customers of the affected neutral person, and therefore could not be the equivalent of picketing, that would constitute (ii) restraint or coercion. With regard to the 8(b)(4)(i)(B) allegation, there was no evidence that the bannering had either the intent or the effect of inducing or encouraging a work stoppage on the part of any neutral persons.

In both locations involved here, the banners were located at a considerable distance from Tanamera's worksite and corporate offices, some 200 yards and 150 yards respectively. As to the worksite location, persons can enter the complex without having to pass by the banner and handbillers. While the banner at the corporate location was some 50 feet from one entrance to that complex, cars also enter that parking lot through two other entrances without having to pass by the banner. In both locations the two persons holding the banners were not wearing Union insignia and did not engage in any other conduct apart from holding the stationary banner. The Union had engaged in no other conduct, including picketing, at either location before setting up the banners.⁴ In sum, given all these circumstances, it could not be concluded that the banners created a gauntlet-like effect,⁵ to establish the confrontational conduct necessary to find that the Union's

⁴ Compare Carpenters Local 971 (Pinecrest Construction and Development), Case 32-CC-1510-1, Advice Memorandum dated April 26, 2004 (placement of banner created confrontational gauntlet effect due to no alternative job site access, distance (almost 170 yards from jobsite but only 30-40 feet from neutral employer's office) of banner, need to move banner to enable neutral customers to access the office, and lawful primary picketing two weeks earlier.

⁵ Compare, e.g., Mine Workers (New Beckley Mining Corp.), 304 NLRB 71, 72 (1991) (finding picketing where 50-140 union supporters milled about in motel parking lot during early morning hours and shouted statements at replacement workers), *enfd.* 977 F.2d 1470 (D.C. Cir. 1992).

bannering is the equivalent of picketing that could be coercive under 8(b)(4)(ii).⁶

In the absence of any confrontation, we further conclude that there is no merit to the argument that the banners could still be viewed as coercive because they mislead the public into thinking that the Union had a primary labor dispute with Tanamera. Thus, due to the remote locations of the banners from Tanamera's worksite and corporate office, the possibly misleading language of the banners would not reasonably cause third persons to keep away from the neutral premises. In these circumstances, even assuming that the message of the Union's banners was misleading, the banners were not coercive within the meaning of Section 8(b)(4)(ii)(B).⁷

Finally, with regard to the 8(b)(4)(i)(B) allegation, all the evidence indicates that the banners were intended as an informational appeal to potential customers of Tanamera. There was no evidence that the banners and the accompanying handbills were either intended to or had the effect of inducing a work stoppage of any neutral persons. The words of the handbill so indicated, and the bannering did not cause any neutral persons to cease performing services. Thus, there is no merit to the 8(b)(4)(i)(B) allegation.⁸

Based on the above analysis, the instant charge should be dismissed, absent withdrawal.

B.J.K.

⁶ See generally Chicago Typographical Union No. 16 (Alden Press, Inc.), 151 NLRB 1666, 1669 (1965) (Board dismissed 8(b)(4)(ii)(B) complaint where union's patrolling with placards naming neutral person lacked element of confrontation with members of public necessary for proscribed secondary picketing). See also Carpenters Local 1506 (Universal Technical Institute, Inc.), Case 28-CC-960, Advice Memorandum dated May 5, 2004 (where union bannering of neutral person was far removed geographically from neutral premises, bannering not considered the equivalent of picketing which requires element of confrontation with members of public).

⁷ See Carpenters Local 1506 (Universal Technical Institute, Inc.), *supra*, at pp. 5-6.

⁸ See, e.g., Laborers Local 332 (C.D.G., Inc.), 305 NLRB 298, 305 (1991); Carpenters Local 316 (E & E Development Co.), 247 NLRB 1247, 1248-49 (1980).